UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2001/SR.26
10 December 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

CONTENTS

DRAFT PROVISIONAL AGENDA AND ADOPTION OF THE REPORT:

(b) ADOPTION OF THE REPORT ON THE FIFTY-THIRD SESSION

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.01-15512 (E) 170801 101201

CONTENTS (continued)

OTHER HUMAN RIGHTS ISSUES:

(a) WOMEN AND HUMAN RIGHTS

(b) CONTEMPORARY FORMS OF SLAVERY

(c) OTHER ISSUES (continued)

ORGANIZATION OF WORK (continued)

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

The meeting was called to order at 10.05 a.m.

DRAFT PROVISIONAL AGENDA AND ADOPTION OF THE REPORT

(b) ADOPTION OF THE REPORT ON THE FIFTY-THIRD SESSION (agenda item 7)

1. The CHAIRPERSON said that, owing to the fact that the Sub-Commission's session was running behind schedule, the complete draft report would not be available for adoption prior to the end of the session. The Bureau therefore proposed that it be adopted ad referendum. A meeting to consider the portion of the draft report already published could be held either in the morning or in the afternoon of the following day, the last day of the session. There would obviously be a more substantial portion of the draft report available in the afternoon.

2. After a discussion in which Mr. ALFONSO MARTINEZ, Ms. HAMPSON, Mr. PREWARE, Mrs. DAES, Mrs. WARZAZI, Mr. OGURTSEV and Mr. PINHEIRO took part, the CHAIRPERSON said he took it that the members wished to meet in the afternoon of the following day to discuss the draft report.

3. It was so decided.

OTHER HUMAN RIGHTS ISSUES:

(a) WOMEN AND HUMAN RIGHTS

(b) CONTEMPORARY FORMS OF SLAVERY

(c) OTHER ISSUES

(agenda item 6) (continued) (E/CN.4/Sub.2/2001/L.2, L.32, L.33, L.36-42 and L.51)

Draft resolution on international protection for refugees and displaced persons (E/CN.4/Sub.2/2001/L.33)

4. Mr. PARK, introducing the draft resolution, said that the sponsors had agreed to delete the words "and displaced persons" from the title.

5. They had also accepted a proposal by Mr. Alfonso Martinez to reword the first part of paragraph 2 to read: "Expresses its concern over the fate of persons who have risked their lives fleeing from their homes to escape persecution and other factors such as starvation or destitution, motivated in part by unfair international economic relations,". The second half of the paragraph, beginning with the words "and reaffirms that", would remain unchanged.

6. Mr. ALFONSO MARTINEZ, thanking the sponsors for incorporating his amendment, suggested that, if the same topic was addressed at the next session, some recognition should be given to the countries that hosted refugees, sometimes at great expense, thereby conscientiously fulfilling their obligations under international law.

7. The draft resolution, as orally revised, was adopted.

Draft resolution on State cooperation with United Nations human rights mechanisms (E/CN.4/Sub.2/2001/L.37)

8. Ms. HAMPSON, introducing the draft resolution, said that the sponsors had agreed to insert the following new operative paragraph between paragraphs 3 and 4 in response to a suggestion by Mr. Kartashkin:

> "Expresses the hope that the Office of the High Commissioner will organize a seminar for those States which have not ratified both of the Covenants, at which the Chairpersons of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights or their nominees will be present, in order to identify and discuss the reasons for those States not, as yet, having become parties to the Covenant."

9. It had also been agreed to insert the phrase "and the proposals contained in Mr. Kartashkin's additional working paper (E/CN.4/Sub.2/2000/2)" after the word "mechanisms" in paragraph 5.

10. The purpose of the resolution was to ensure that a State which failed to cooperate with human rights treaty monitoring bodies or with thematic mechanisms that had sought to visit the State in question was placed on the agenda of the Commission on Human Rights under the item that addressed country situations. Where a State had ratified the two Covenants, its periodic reports alerted the relevant treaty bodies to serious human rights concerns. Where a State had not ratified the Covenants and had failed to accede to a request for a visit by one of the thematic mechanisms within a specific time limit, there was no way for the United Nations human rights machinery to confirm serious allegations made in reports by non-governmental organizations (NGOs).

11. Mr. ALFONSO MARTINEZ said that he would vote against the draft resolution because it repeated a mistake that the Sub-Commission had been making again and again for a number of years, namely, attempting to compel States to fulfil legal obligations that they had not assumed. He took issue in particular with the penultimate preambular paragraph and paragraph 6.

12. The CHAIRPERSON suggested that consideration of the draft resolution should be deferred pending further consultations.

13. It was so decided.

Draft resolution on reservations to human rights treaties (E/CN.4/Sub.2/2001/L.38)

14. Ms. HAMPSON, introducing the draft resolution, said that the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Elimination of Discrimination against Women (CEDAW) had requested the Sub-Commission to undertake a study on reservations to human rights treaties. The Sub-Commission had prepared a working paper three years previously and had asked the Commission on Human Rights to appoint a special rapporteur to undertake such a study. The Commission had refused the request.

15. In 2000, she had discussed the matter with Mr. Pellet, Special Rapporteur of the International Law Commission on reservations to treaties, and they had agreed that the two studies would not clash or overlap. The Commission on Human Rights had nonetheless turned down a second request to appoint a special rapporteur, notwithstanding its own principle that the Sub-Commission should accede to requests from treaty monitoring bodies. The draft resolution therefore proposed that an extended working paper, which did not require the Commission's consent, should be prepared.

16. Mr. ALFONSO MARTÍNEZ said that the Sub-Commission had been deluged with requests from other bodies to undertake studies of subjects in which they were interested. The draft resolution sought to place international human rights treaties in a different category from other international treaties. In his view, it was a topic that fell outside the mandate of the Sub-Commission and should be addressed only by the specialized legal organs of the United Nations.

17. Ms. HAMPSON said that she had stated in her working paper (E/CN.4/Sub.2/1999/28 and Corr.1) that only one regime was applicable to reservations to treaties and that there was no evidence of the existence of a separate regime for human rights treaties. The Vienna Convention on the Law of Treaties stipulated that a reservation that was incompatible with the object and purpose of the treaty was invalid. The question to be addressed by the Sub-Commission was how that provision should be applied in the context of reservations to human rights treaties.

18. Mr. KARTASHKIN proposed that the draft resolution, which had been sponsored by a majority of the members of the Sub-Commission, should be adopted forthwith.

19. Mr. GUISSE said that he had agreed to sponsor the draft resolution before the French translation had become available. Having studied the text in a language he understood, he wished to withdraw his sponsorship.

20. Ms. ZERROUGI said that she, too, wished to withdraw her sponsorship for the same reason.

21. A procedural discussion then ensued on the advisability of Sub-Commission members sponsoring documents in a language that they understood imperfectly in which Mr. PREWARE, Mr. JOINET, Mr. EIDE and Mr. GUISSE took part.

22. Mrs. WARZAZI said that she was ready to join the consensus if the words "and endorses the conclusions contained therein" were eliminated from the sixth preambular paragraph.

23. Ms. HAMPSON, speaking as the author of the draft resolution, said she could accept that amendment, if the other sponsors had no objections.

24. The draft resolution, as orally amended, was adopted.

25. Mr. ALFONSO MARTINEZ said he wished to place on record that, if there had been a vote, he would have abstained.

Draft resolution on the right of return of internally displaced persons and refugees (E/CN.4/Sub.2/2001/L.39)

26. Ms. HAMPSON, introducing the draft resolution, said that she had made four changes to the text in response to the concerns and suggestions of various members of the Sub-Commission. First of all, an additional preambular paragraph should be inserted after the fifth preambular paragraph, to read:

> "Confirming that nothing in this resolution shall be construed as affecting, directly or indirectly, any dispute regarding sovereignty over a territory or as limiting or derogating from any additional rights recognized and ensured under the laws of the relevant State."

27. Secondly, the word "this" in the second line of paragraph 2 should be replaced by the word "restitution", so as to address the fear that people would be able to "sell" their right of return; thirdly, the last part of paragraph 11, "on condition that ... impartial observer", should be revised to read: "but any such decision will only be valid and of legal effect if its voluntary character is confirmed by an independent and impartial observer".

28. Lastly, the draft decision on the return of refugees' or displaced persons' property (E/CN.4/Sub.2/2001/L.44) was to be incorporated into the current draft resolution (E/CN.4/Sub.2/2001/L.39). To that end, the following text should be inserted after paragraph 17:

> "Taking into account the suggestion of the Committee on the Elimination of Racial Discrimination concerning the preparation of a study (see E/CN.4/Sub.2/1997/31, annex), decides to entrust Mr. Paulo Sérgio Pinheiro with the preparation, without financial implications, of a working paper on the restitution of the property of refugees and internally displaced persons, to be submitted to the Sub-Commission in order to enable it to take a decision at its fifty-fourth session on the feasibility of a comprehensive study on that subject."

29. Millions of refugees and internally displaced persons existed throughout the world and one of their problems was that some States sought to resettle them and did not recognize their right to return to their homes. In some cases, they had the right in theory, but the implications of the right were neither recognized nor implemented; for example, when the State did not repair

damage caused to the infrastructure. They also needed security and stability, whilst waiting to be able to exercise the right to return, but they were unable to obtain that stability because they were unable to secure any rights to property. Their only asset was the property rights they had elsewhere, which they were unable to exercise.

30. It was crucial that any cession of property should be truly voluntary; it was not enough that an individual had signed a document, because there was always a risk of coercion. An independent and impartial observer must therefore confirm the voluntary character of the cession. The United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC) were accustomed to performing that type of task.

31. The draft resolution clarified the rights of internally displaced persons and refugees and had been prepared in very close cooperation with UNHCR and the Commission on Human Rights. In addition, in order to deal with long-term issues, which the draft resolution did not address, it would be very useful to have the type of working paper that was entrusted to Mr. Pinheiro.

32. Mr. Sik Yuen had expressed concern that the proposal to give British citizenship to the Ilois would affect their right to return. It would not do so under the draft resolution at hand, because their right to return could not be affected by a grant of citizenship, even if the British authorities were able to require them to renounce their right to property, since that would be of no legal effect, unless it was of a truly voluntary character, as confirmed by an independent and impartial observer.

33. The CHAIRPERSON said that, since various members of the Sub-Commission wished to speak on the draft resolution, it would be preferable to postpone the discussion until later.

34. Mr. GUISSE asked for the oral revisions to be made available to him in French, so that he could participate in the discussion.

Draft resolution on terrorism and human rights (E/CN.4/Sub.2/2001/L.40)

35. Mrs. DAES, introducing the draft resolution, said that it was sponsored by all the members of the Sub-Commission. It requested the Special Rapporteur, Ms. Kalliopi Koufa, to continue her work, taking into account the views and comments made during the Sub-Commission's discussion of the topic and to submit a second progress report to the Sub-Commission at its fifty-fourth session.

36. Mr. KARTASHKIN said he wondered why so many important issues had been included under agenda item 6 "Other human rights issues", when each of them merited its own heading. He suggested that agenda item 6 be renamed Terrorism and Human Rights, which would enhance the draft resolution.

37. The draft resolution was adopted unanimously.

Draft decision on promotion and consolidation of democracy (E/CN.4/Sub.2/2001/L.41)

38. Mr. BENGOA, introducing the draft decision, said that it requested Mr. Manuel Rodriguez-Cuadros to prepare an expanded working paper for submission to the Sub-Commission at its fifty-fourth session.

39. The draft decision was adopted.

Draft decision on the humanitarian situation of the Iraqi population (E/CN.4/Sub.2/2001/L.42)

40. Mrs. WARZAZI said that the Sub-Commission had generally adopted the decision on the humanitarian situation of the Iraqi population by consensus. The only difference from the decision adopted the previous year were the allusions to several statements by the Secretary-General, the reference to the statement made by the person in charge of the "oil-for-food" programme, and the appeal to the World Health Organization (WHO) to devote special attention to the serious health problems affecting the civilian population.

41. Mr. BENGOA, Mrs. DAES, Mr. KARTASHKIN, Mr. GOONESEKERE and Mr. SORABJEE asked for their names to be added to the list of sponsors.

42. Mr. JOINET said that he had sponsored the draft resolution because he supported the cause of the population but not that of the regime.

43. Mr. YIMER reminded the Sub-Commission that sponsors of draft resolutions or draft decisions were not permitted to explain their views.

44. The draft decision was adopted.

Draft resolution on the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery (E/CN.4/Sub.2/2001/L.51)

45. Mr. GOONESEKERE, introducing the draft resolution, said that it was a formal resolution to ensure the continuation of the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery.

46. Mrs. DAES asked that her name be added to the list of sponsors.

47. The draft resolution was adopted.

Draft resolution on systematic rape, sexual slavery and slavery-like practices (E/CN.4/Sub.2/2001/L.32)

48. The CHAIRPERSON said that the revised version of the draft resolution, including the proposed amendments that had been discussed the previous day, had been distributed to the members of the Sub-Commission.

49. Mr. YOKOTA said that the revised version reflected the results of the discussions. However, he had consulted the author of the draft resolution, Mr. Park, who was unable to be present, and the phrase added to paragraph 5 should read "educational curricula", rather than "educational curriculum".

50. The revised draft resolution was adopted.

Draft decision on human rights and weapons of mass destruction, or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering (E/CN.4/Sub.2/2001/L.2) and L.36)

51. The CHAIRPERSON said that Mr. van Hoof and Mr. Park had become sponsors of the draft decision.

52. Ms. HAMPSON, introducing her proposed amendments to the draft decision (E/CN.4/Sub.2/2001/L.36) said that weapons of mass destruction, at the time of their use, had effects that could not be controlled geographically. Consequently, an intrinsic feature of the use of weapons of mass destruction was the impossibility of distinguishing between military targets and civilians. Any use of weapons of mass destruction was thus necessarily unlawful, and the manufacture and possession of such weapons could be prohibited. Despite the need for rigorous enforcement regimes, some treaties did not provide for such mechanisms. Negotiations currently taking place in the context of the disarmament of biological and bacteriological weapons were designed to address that issue. Weapons of mass destruction were not only nuclear weapons; they could also be chemical, biological, bacteriological, and potentially even genetic, in character.

53. Depleted uranium, on the other hand, was an ingredient in conventional weapons, such as anti-tank missiles. Its effects, at the time of use, were not widespread, which meant that it could not be regarded as a weapon of mass destruction. There were, however, possible long-term effects connected with the use of depleted uranium, connected in particular with the release of heavy metals at the time of impact. There were rules applicable to the use of conventional weapons, including depleted uranium, which differed substantially from those governing the use of weapons of mass destruction.

54. A study that attempted to deal with depleted uranium as if it were a weapon of mass destruction would be misleading, and would ignore a range of other conventional weapons which gave rise to similar concerns, for instance tumbling bullets, exploding bullets, cluster weapons, incendiary weapons used against people, "non-lethal weapons" and unexploded ordnance. Human rights considerations should be taken into account during the system for approving new weapons, which could prevent problems in the future. Her proposal was for an entirely separate study concerning the use of conventional weapons, including depleted uranium.

55. The CHAIRPERSON invited the Sub-Commission to vote separately on parts A and B of the amendments proposed by Ms. Hampson (E/CN.4/Sub.2/2001/L.36), with the insertion of the word "transfer" after the words "production, storage".

56. Mr. YOKOTA, speaking on a point of order, said that he, too, would like to propose some amendments to the draft decision and reserved the right to do so at a later stage.

57. Mr. ALFONSO MARTINEZ said that Ms. Hampson's amendments consisted of three separate proposals: first of all, the insertion of the word "transfer" after the words "production, storage"; secondly, the deletion of the text following "weapons of mass destruction or with indiscriminate effect" and, thirdly, the insertion of a whole new paragraph taking the form of a separate draft decision. He proposed that a separate vote should be held on each of those three aspects. However, before proceeding to a vote, he would like to hear the amendments proposed by Mr. Yokota.

58. Ms. MOTOC requested some time for further consultations before a vote was held on the amendments proposed by Ms. Hampson and Mr. Yokota.

59. Mr. JOINET asked whether the phrase "weapons of mass destruction or with indiscriminate effect", in the draft decision meant nuclear weapons. If that were so, the dangers to the effective enjoyment of human rights were not just potential but very real. He asked to become a sponsor of the draft decision if it did indeed refer to nuclear weapons.

60. Mr. ALFONSO MARTINEZ said that nuclear weapons were certainly included in the definition of weapons of mass destruction or with indiscriminate effect, but that there were other types of weapon also which fell into that category.

61. Mrs. WARZAZI proposed that the words "real and" should be inserted into the text before the word "potential".

62. The CHAIRPERSON said he thought that a consensus had emerged to insert the word "transfer" after "production, storage" and the words "real and" before "potential".

63. It was so decided.

64. Mr. YOKOTA proposed that the word "testing" be inserted next to the word "transfer". He also suggested that "with particular emphasis on" should be replaced by the words "including in particular", before the words "the use of weaponry containing depleted uranium".

65. The CHAIRPERSON said he took it that the Sub-Commission wished to insert the word "testing" after the word "transfer".

66. It was so decided.

67. Mrs. WARZAZI said that "inter alia" would be a more suitable phrase than "including in particular".

68. Mr. PREWARE said that the word "including" was sufficient on its own without "in particular".

69. It was so agreed.

70. Mr. GUISSE, supported by Ms. HAMPSON, proposed that the word "trafficking" be inserted after the word "transfer".

71. It was so decided.

72. Mr. PREWARE asked why it was necessary to include the word "superfluous" before "injury".

73. Ms. HAMPSON said that "superfluous" was the technical term used in the law of armed conflict to identify unlawful weapons.

74. The CHAIRPERSON invited comments concerning the remaining two amendments proposed by Ms. Hampson.

75. Mr. JOINET, supporting the draft amendments, said that Ms. Hampson had convincingly argued that conventional weapons, including those containing depleted uranium, posed significantly different problems and therefore required an entirely separate study.

76. Mrs. WARZAZI, supported by Mr. PREWARE, said that the word "or" before the expression "of a nature to cause superfluous injury or unnecessary suffering", in the current text of the draft decision already dealt with the concerns expressed by Ms. Hampson. It allowed a distinction to be made between weapons of mass destruction and conventional weapons such as those containing depleted uranium.

77. Ms. HAMPSON said that the text as it stood was not adequate to cover the various principles of analysis concerning conventional weapons. There were many legal arguments that needed to be taken into account with regard to conventional weapons, besides the criteria of "superfluous injury and unnecessary suffering". Only by addressing those issues in a separate study could States be made fully aware of the need to consider human rights in connection with weapons such as depleted uranium.

78. Mr. YOKOTA, supported by Mr. ALFONSO MARTÍNEZ and Mr. KARTASHKIN, asked for a vote on the remaining amendments proposed by Ms. Hampson.

79. Mr. JOINET, speaking on a point of order, said that he had yet to receive a satisfactory answer to the question he had asked earlier. He was thus opposed to the request for a vote.

80. The CHAIRPERSON suggested that further consultations should be held before the opening of the next meeting, with a view to resolving the remaining issues.

81. Mr. ALFONSO MARTÍNEZ, speaking on a point of order, said he disagreed with the decision to suspend the subject and return to the same discussion in the afternoon meeting. If necessary, the current meeting could be prolonged until a decision was reached.

ORGANIZATION OF WORK (agenda item 1) (continued) (E/CN.4/Sub.2/2001/L.34 and L.43

82. Mr. KARTASHKIN, referring to the draft decision on the positive effect of work relatin to specific situations (E/CN.4/Sub.2/2001/L.34), said that, since it decided that an excerpt from Mr. Louis Joinet's intervention under agenda item 2 was to be brought to the attention of the Commission on Human Rights, it would be necessary to arrange for Mr. Joinet's statement to b reproduced as a document for submission to the Commission.

83. After a procedural discussion in which Mrs. WARZAZI, Mr. PREWARE and Mr. JOINET took part, the CHAIRPERSON said that the Sub-Commission would have ample opportunity to discuss the draft decision when it was formally introduced.

Draft decision on organization of work (E/CN.4/Sub.2/2001/L.43)

84. Mr. PINHEIRO said his proposal, on behalf of the Bureau, was simply to change the order of items on the agenda for the Sub-Commission's fifty-fourth session to 1, 2, 6, 5, 4, 3, 7, and to renumber them accordingly. It had also been proposed that agenda item 6 should be amended to read "Women and human rights and other issues", and should be renumbered as item 3.

85. Mrs. WARZAZI pointed out that, in French, the item should read "Femmes et droits de l'homme" and not "Droits de la femme".

86. Mr. ALFONSO MARTÍNEZ said that, despite its good intentions, the draft decision ga rise to a number of practical problems. He believed that, at its current session, the Sub-Commission did not have the authority to decide on an agenda or programme of work for the following session: it could only take note of proposals for such an agenda. It could not anticipate the decisions that would be taken in the future, particularly as there would be electio between the current session and that of 2002, which would mean that the composition of the Sub-Commission might change. He did not think the draft decision served any purpose.

87. Mr. EIDE said he noted that the draft provisional agenda for the fifty-fourth session wa to be adopted the following day under agenda item 7. He proposed therefore that consideration of the draft decision be deferred until then.

88. It was so decided.

Draft decision on measures to improve the functioning of the Sub-Commission on the Promotio and Protection of Human Rights (E/CN.4/Sub.2/2001/L.47)

89. Mr. PINHEIRO said that, in its decision 1999/256, the Economic and Social Council ha approved the recommendation of the Commission that the Council should include in its resume organizational session consideration of any proposals regarding special procedures mandates adopted at the annual session of the Commission. In accordance with the provisions of that resolution, the Commission had been able for the past three years to seek early action by the

Council, for instance on new special procedures mandates. Early action by the Council on draft proposals recommended by the Commission with respect to such mandates had ensured the prompt nominations of mandate holders by the Commission Chairperson.

90. The draft decision proposed a similar procedure, whereby the Commission would take early action with respect to draft proposals submitted to the Sub-Commission that would improve its functioning, such as early endorsement of draft proposals for studies; early endorsement of transmittal of notes verbales requesting information from Governments, NGOs, etc.; and early endorsement of any proposals for seminars and workshops which did not have financial implications.

91. Mr. JOINET said that, every year, the Commission asked the Sub-Commission to continue to improve its working methods. The draft decision under consideration was a revolutionary one of great importance. It would mean that the Secretariat would no longer have to wait until April of the following year to send out notes verbales, contact the Bureau, and organize the Sub-Commission's work, but would be able to begin its task in the autumn of the same year. He urged that it be adopted unanimously.

92. The draft decision was adopted unanimously.

93. Mrs. DAES said she would like to make a proposal which she considered essential for improving the functioning of the Sub-Commission. The Commission on Human Rights, and through it the Economic and Social Council, should be requested to restore the fourth week of the Sub-Commission's annual session. That proposal was justified by the latter's heavy agenda, the large number of its pending studies, reports and working papers, and above all the quality of its work as a serious think-tank for the Commission and other organizations of the United Nations system.

94. Mr. JOINET said that, while he endorsed that proposal, he could not support its inclusion in the decision just adopted, since such inclusion would be likely to jeopardize the latter's success. The Commission would be highly unlikely to agree to the addition of a fourth week in view of the fact that some of its members favoured doing away with the Sub-Commission altogether. The proposal should be made the subject of a separate draft decision.

95. Mr. PINHEIRO said he fully supported that proposal. The Commission's decision to shorten the Sub-Commission's session by a week had sent the wrong signal to the human rights community. However, it would be necessary to find a wording explaining the need for such an extension.

96. Ms. HAMPSON said that it would be helpful if the NGOs could make their views on the issue known directly to the Commission.

97. The CHAIRPERSON said he took it that it was the wish of the Sub-Commission to adopt the proposal by Mrs. Daes unanimously and request the Bureau to draft a suitable text.

98. It was so decided.

Draft decision concerning the composition of working groups of the Sub-Commission for 2002

99. The draft decision was adopted.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued)
(E/CN.4/Sub.2/2001/L.17, L.24 and L.44)

Draft resolution on intellectual property and human rights (E/CN.4/Sub.2/2001/L.17)

100. Mr. OLOKA-ONYANGO said that, following consultations, he had three changes to make to the draft resolution. A further preambular paragraph should be added after the paragraph beginning "Noting with appreciation", to read: "Recalling the decision of the Commission on Human Rights in resolution 2001/30 of 20 April 2001 (E/CN.4/Res/2001/30) to request the High Commissioner for Human Rights to strengthen the research and analytical capacities of her Office in the field of economic, social and cultural rights and to share her expertise, inter alia, through the holding of expert meetings".

101. A new operative paragraph should be added after paragraph 9, to read "Requests the United Nations High Commissioner for Human Rights to consider the need for an examination and, if necessary, to conduct such an investigation, into whether the patent, as a legal instrument, is compatible with the promotion and protection of human rights and corresponding State obligations".

102. In paragraph 12, the words "... the Commission on Human Rights to request" in the first line should be deleted.

103. Mrs. DAES said she would like to become a sponsor of the draft resolution.

104. The draft resolution, as orally revised, was adopted.

Draft resolution on study on non-discrimination as enshrined in article 2.2 of the International Covenant on Economic, Social and Cultural Rights (E/CN.4/Sub.2/2001/L.24)

105. The CHAIRPERSON suggested that, to allow time for further consultations, consideration of that draft resolution should be deferred until the next meeting.

106. It was so decided.

Draft decision on the return of refugees' or displaced persons' property
(E/CN.4/Sub.2/2001/L.44)

107. The CHAIRPERSON said that the draft decision in question had been subsumed into the draft resolution on the right to return of internally displaced persons and refugees (E/CN.4/Sub.2/2001/L.39), which was to be discussed at the next meeting.

The meeting rose at 1.05 p.m.

UNITED
NATIONS

E

Economic and
Social Council

Distr.
GENERAL

E/CN.4/Sub.2/2001/SR.27
30 August 2001

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 August 2001, at 3 p.m.

Chairperson: Mr. WEISSBRODT

CONTENTS

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within a week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE. *0110575*

ENG

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (*continued*)

Draft resolutions and decisions relating to item 6 of the agenda (*continued*)

Draft decision E/CN.4/Sub.2/2001/L.2

Draft decision E/CN.4/Sub.2/2001/L.36 (Human rights and weapons of mass destruction, or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering) and the amendment thereto (E/CN.4/Sub.2/2001/L.36) (*continued*)

1. Ms. HAMPSON recalled that the sponsors of draft decision L.2 and of draft amendment L.36 had been requested to consider the possibility of arriving at a compromise. In that spirit, she wished to make a further proposal for amending draft decision L.2 so that it would read along the following lines: "At its ... meeting, on ... August 2001, the Sub-Commission on the Promotion and Protection of Human Rights, recalling its resolutions 1997/36 and 1997/37 of 28 August 1977, decided to authorize Mr. Y.K.Y. Sik Yuen to prepare, without financial implications, in the context of human rights and humanitarian norms the working paper, originally assigned to the former Sub-Commission member Ms. Clemencia Forero Ucros in resolution 1997/36,

a) assessing the utility, scope and structure of a study on the real and potential dangers to the effective enjoyment of human rights caused by the testing, production, storage, transfer and trafficking or use of weapons of mass destruction or with indiscriminate effect and

b) studying the implications of human rights law, notably the protection of the right to life, the prohibition of cruel, inhuman and degrading treatment, the protection of the home, including the environment, for the actual and possible use of conventional weapons, including those containing depleted uranium,

and to present the working document to the Sub-Commission at its fifty-fourth session."

2. The proposal was prompted by the fact that depleted uranium, which was only an ingredient, could not in itself be regarded as a weapon of mass destruction. That having been said, the draft decision provided for a study to be made of the consequences of using depleted uranium from the point of view of the law relating to human rights and humanitarian norms.

3. Mr. ALFONSO MARTÍNEZ said that in his view the latest proposal was totally unacceptable, if only because it took for granted that the Sub-Commission considered weapons containing depleted uranium to be conventional weapons and not weapons of mass destruction or with completely unforeseeable effects. He was therefore opposed to the proposal.

4. Ms. WARZAZI said that there was a substantial difference between paragraphs (a) and (b) of the wording just proposed made by Ms. Hampson: in the former, a study of the real and potential dangers associated with certain weapons was envisaged, whereas, in the latter, the Special Rapporteur was requested merely to study the effects of human rights legislation. She would therefore support the draft decision as amended orally during the previous meeting and would vote against the amendment submitted by Ms. Hampson.

5. Mr. JOINET said that he was in favour of the latest draft amendment: while abiding by the spirit of the draft decision, it clarified what the general thrust of the requested study should be. As to whether or not weapons containing depleted uranium were weapons of mass destruction, it would be for the Special Rapporteur to enlighten the Sub-Commission regarding that question.

6. Ms. HAMPSON said that in the study a distinction should be made between weapons of mass destruction, which were covered by special regimes, and conventional weapons, with regard to which it would be necessary to determine whether or not they could be used in such a manner as to produce indiscriminate effects. She therefore hoped that the members of the Sub-Commission would vote for her amendment proposal.

7. *A vote by show of hands was taken on the amendment proposed by Ms. Hampson.*

8. *The amendment proposed by Ms. Hampson was rejected by 14 votes to 3, with 4 abstentions.*

9. *A vote by show of hands was taken on draft decision E/CN.4/Sub.2/2001/L.2 as amended orally during the 26th meeting.*

10. *Draft decision E/CN.4/Sub.2/2001/L.2, as amended, was adopted by 21 votes to 2.*

Draft resolution E/CN.4/Sub.2/2001/L.26 (The question of the transfer and use of small arms and light weapons in the context of human rights and humanitarian norms) (*continued*)

11. Mr. EIDE said that, following consultations, the sponsors had decided to amend the last part of draft decision L.26 so that it read: "... to entrust Ms. Barbara Frey with the task of preparing, without financial implications, a working paper on (a) the trade in and carrying of small arms and light weapons, and (b) the use of such weapons in the context of human rights and humanitarian norms, for submission to the Sub-Commission at its fifty-fourth session". The phrase "especially by law enforcement officials" had been deleted.

12. Mr. JOINET said that he wished to co-sponsor the draft decision, since he had received an assurance that the report would also cover the harmful role of pressure groups, which, in certain countries, opposed the establishment of regulations to control the purchase and carrying of weapons.

13. Mr. GUISSÉ, Mr. SORABJEE, Mr. SIK YUEN and Mr. GÓMEZ-ROBLEDO VERDUZCO said that they wished to co-sponsor the draft decision.

14. *Draft decision E/CN.4/Sub.2/2001/L.26, as amended orally, was adopted.*

Draft resolution E/CN.4/Sub.2/2001/L.37 (State cooperation with United Nations human rights mechanisms) (*continued*)

15. Ms. WARZAZI urged the sponsors of the draft resolution to withdraw it. Otherwise, she would formally propose that the Sub-Commission postpone consideration of the draft resolution to its next session.

16. Ms. HAMPSON contested the argument, put forward during the previous meeting by Mr. Alfonso Martínez, that the draft resolution would result in an encroachment on the sovereignty of States as it would oblige them to accept visits by thematic rapporteurs. Countries were perfectly free not to ratify a treaty or not to accept the visit of a special rapporteur. The point was simply that, if a special rapporteur requested a government to authorize a visit by him/her and the visit did not take place before a certain date, the country in question was inscribed in the list of countries in which the human rights situation was being examined by the Commission.

17. Mr. KARTASHKIN said that it was operative paragraph 6 of draft resolution L.37 which was creating problems and proposed that it be deleted.

18. Mr. FAN Guaxiang said that he had serious reservations about draft resolution L.37, which, in his view, mixed up several concepts. The fact that the visit of a working group or a special rapporteur to a given country had not taken place could in no way be regarded as a massive violation of human rights. Similarly, the wish to examine the human rights situation in a country on the grounds that that country had not ratified a given instrument was due to the mingling of several different concepts. Moreover, as the Commission had recommended to the Sub-Commission that it not examine the human rights situation in countries, he did not see why the Sub-Commission was recommending to the Commission new criteria as a basis for examining the situation of human rights in specific countries.

19. Ms. HAMPSON proposed, after consulting with the sponsors of the draft resolution, the adjournment of the debate on the matter in accordance with rule 49 of the Guidelines for the application by the Sub-Commission of the rules of procedure of the functional commissions of the Economic and Social Council.

20. Mr. KARTASHKIN said that he was opposed to an adjournment of the debate and that, if the decision to adjourn was taken, he would in his own name submit draft resolution L.37 minus operative paragraph 6, in accordance with rule 53 of the Guidelines.

21. The CHAIRPERSON said that rule 53 of the Guidelines could not be invoked in the present case since it applied to the withdrawal of a proposal or a motion and not to the adjournment of the debate.

22. *Following an exchange of views in which* Ms. WARZAZI, Mr. YIMER, Ms. HAMPSON, Mr. KARTASHKIN, Mr. GUISSÉ, Mr. SORABJEE, Mr. YOKOTA and Mr. ALFONSO MARTÍNEZ participated, *the debate on draft resolution E/CN.4/Sub.2/2001/L.37 was adjourned.*

Draft decision E/CN.4/Sub.2/ 2001/L.34 (Positive effect of work relating to specific situations)

23. Ms. HAMPSON said that the sponsors of the draft decision had decided to withdraw it.

24. *Draft decision E/CN.4/Sub.2/2001/L.34 was withdrawn.*

Draft resolution E/CN.4/Sub.2/2001/L.39 (the right to return of internally displaced persons and refugees) (*continued*)

25. Ms. HAMPSON said that the amendments to the third paragraph of the preamble and to operative paragraphs 2 and 9 proposed during the previous meeting by Mr. Sik Yuen were surprising, since their effect would be that the right to compensation would be enjoyed only by displaced persons whose property had not been destroyed, who constituted only a minority. Moreover, it would run counter to the freedom of movement to delete the phrase "or they can voluntarily settle elsewhere" in operative paragraph 10, since the purpose of that phrase was to prevent displaced persons being forced to settle at a location where they were not safe and which they could not leave of their own free will. In addition, she was opposed to the deletion of operative paragraph 11; the purpose of the version of that paragraph which had been amended by the co-sponsors was to prevent attempts to convince members of the indigenous population of Diego Garcia, for example, to renounce all their rights to their land in exchange for British citizenship, it being envisaged that independent and impartial observers would verify that the displaced persons were accepting the proposed compensation of their own free will.

26. In her view, the draft resolution, as amended by the sponsors, effectively protected the right of return of refugees and internally displaced persons, and she hoped that the Sub-Commission would adopt it.

27. The CHAIRPERSON invited four persons for and four persons against the draft resolution to present their arguments before a vote was taken on the text.

28. Mr. SIK YUEN, supported by Mr. SORABJEE, asked what authorities would be responsible for determining that property could not be restituted and that displaced persons were really exercising their free will. Also, he wondered whether the impossibility of restituting property might not be used against the inhabitants of the island of Diego Garcia who had been displaced and could not invoke their right of return. In his view, operative paragraph 11 applied particularly to the inhabitants of islands and could give rise to abuses, since it authorized renunciation of the right to compensation in transactions which could harm the persons concerned by nullifying their right of return.

29. Ms. DAES expressed support for the draft resolution as amended. In response to the question as to what authorities would take decisions relating to compensation, she said that, in practice, it was competent national courts which decided to grant compensation in cases where return was not possible.

30. Mr. PREWARE said that he had requested that his name be deleted from the list of co-sponsors of the draft resolution, since he had been convinced by the arguments of certain experts that many of the provisions might give rise to interpretation disputes and therefore harm the persons whom this text was meant to benefit.

31. Mr. PINHEIRO, inviting support for the draft resolution, said that part of it had been directly inspired by experiences which he had had as an observer in various countries. The question of the restitution of the property of refugees and displaced persons was a very topical one and the subject of growing attention on the part of international and regional organizations, since the thorny problems that arose in that area represented a major obstacle to return.

32. Ms. HAMPSON said that the draft resolution had been examined by the Office of the High Commissioner for Refugees, which had also taken note of the amendments; that was a guarantee of its political neutrality. Moreover, operative paragraph 2 could not, after being amended, be interpreted to mean that compensation would prevent return; reparation was foreseen only if the property in question had been destroyed and could not be restituted. In the case of the island of Diego Garcia, there was theoretically no obstacle to restitution and the return of the inhabitants of the island. The United Kingdom should therefore give up its base and restore the land to its original state.

33. With regard to operative paragraph 11, the sponsors did not have any particular group of persons in mind, but the hundreds of millions of refugees and displaced persons who could not institute reparation proceedings as they did not have access to the property which they had lost. As to confirmation by an independent and impartial observer, it would be a good idea to request the services of the Office of the High Commissioner for Refugees, which was well qualified to do the job in question.

34. Mr. GUISSÉ reminded the Secretariat that he had requested that his name be withdrawn from the list of co-sponsors of the draft resolution.

35. Mr. ALFONSO MARTÍNEZ said that he did not support the draft resolution and that he shared the views expressed by the Rapporteur, Mr. Preware. It related to very different situations that could not all be dealt with in the same way. The case of refugees was completely different from that of internally displaced persons, and the context varied from country to country. He would like to see the draft resolution withdrawn. If it were put to the vote, he would not be able to vote for it.

36. Mr. EIDE said that he fully appreciated the concern expressed by Mr. Sik Yuen; he himself was very familiar with the refugee and displaced person problem which Mr. Sik Yuen had in mind, especially in the context of the former Yugoslavia, and believed that it must be addressed. The guarantees proposed by Ms. Hampson should be satisfactory. Hence, given the urgent nature of the problem, he hoped that the Sub-Commission would adopt the draft resolution.

37. Mr. YIMER recalled that, when responding to Mr. Sik Yuen, Ms. Hampson had referred to the situation on the island of Diego Garcia—thereby touching on what was for Africa a very sensitive point. How could she assert that the draft resolution under consideration had no political implications?

38. Ms. HAMPSON said that she had referred to a specific situation because a specific problem had been raised and because she wished to show that the amended text would not have a negative impact on the situation in question. If a specific situation had not been referred to, she would have confined herself to general comments regarding the right of return of refugees and internally displaced persons. The Office of the High Commissioner for Refugees would certainly not have approved a text concerning specific situations.

39. Mr. FAN, explaining his vote before the vote, said that he would vote against the draft resolution. It was undoubtedly meant to promote respect for human rights, but there were cases where invoking human rights was unwise. Having listened to Ms. Hampson's explanation regarding the draft resolution and the amendments to it, he was convinced that questions relating to the human rights of refugees and internally displaced persons could not be isolated from their particular historical and geographic contexts. Human rights were not something vague. They related to very specific situations.

40. *A vote by show of hands was taken on draft resolution E/CN.4/Sub.2/2001/L.39, as amended.*

41. *Draft resolution E/CN.4/Sub.2/2001/L.39 was rejected by 11 votes to 9, with 3 abstentions.*

42. Mr. PARK said that, as a co-sponsor of the draft resolution, he had voted for it. He was very concerned about the right of return of refugees and internally displaced persons to their home countries. However, he fully appreciated the points raised by Mr. Sik Yuen, especially those concerning the implications which the draft resolution might have for his country.

Draft resolution E/CN.4/Sub.2/2001/L.29 (International cooperation in the detection, arrest, extradition and punishment of persons guilty of crimes against humanity)

43. Mr. BENGOA recalled that the first amendment proposed was to change the title so that it would be the same as that of General Assembly resolution 3074 (XXVIII), which referred to "persons guilty of war crimes and crimes against humanity"—not just persons guilty of crimes against humanity; the same change should be made in the body of the draft resolution wherever reference was made to crimes against humanity. In operative paragraph 2, the words "persons guilty of" should be replaced by the words "persons found guilty of". In operative paragraph 3, the words "before an independent impartial tribunal, in conformity with the requirements of due process," should be inserted after the words "shall be subject to trial"; they should be placed in brackets so as to show that they had not been taken from the quoted General Assembly resolution. Mr. Joinet would present amendments relating to the French version.

44. Mr. YOKOTA said that the draft resolution did not create any particular problems for him, except that in his view operative paragraph 4 did not accord with international law. He proposed that it be amended to read "*Affirms* that States should cooperate in the arrest, extradition, trial and punishment of persons guilty of crimes against humanity, including former heads of State or Government, keeping in mind the purposes and principles of the Charter of the United Nations and

generally recognized norms of international law". The question was not a political one, but simply one of interpreting international law.

45. Ms. HAMPSON suggested to Mr. Yokota that in the amendment proposed by him the word "should" be replaced by "have an obligation to".

46. Mr. JOINET supported the amendment proposed by Mr. Yokota, as modified by Ms. Hampson.

47. As to the title of the draft resolution, he considered that it would be appropriate to use the title of the General Assembly resolution, as suggested by Mr. Bengoa. With regard to the detailed drafting, both of the title and of the main text, he would leave it to the editors to draw upon the text of the General Assembly resolution.

48. The Sub-Commission members with a Roman Law background and those with an Anglo-Saxon legal background had agreed on how to harmonize the text. In the French version, operative paragraph 2 would read "... en vue de rechercher, arrêter, juger ou extrader et condamner les personnes reconnues coupables de crimes de guerre et de crimes contre l'humanité". In that connection, he recalled the principle of international law that one should try or extradite. Similarly, in operative paragraph 3, the subparagraph starting in the English version with the words "States shall assist each other ..." would read in French as follows: "Les États se prêtent mutuellement leur concours en recherchant, en arrêtant et en traduisant en justice les personnes contre lesquelles existent des charges suffisantes établissant qu'elles ont commis de tels crimes".

49. Mr. SORABJEE, referring to the text just read by Mr. Joinet, proposed that "suffisantes" be replaced by "prima facie"—the words used in the English version of that subparagraph.

50. Ms. HAMPSON proposed replacing the word "detect" in operative paragraph 2 by the words "search for", so as to bring the English version of that paragraph closer into line with the French version.

51. Mr. JOINET said that the same terminology would be used throughout the text and that consequential changes would be made.

52. Ms. ZERROUGUI, referring to the principle of international law mentioned by Mr. Joinet, that States must "arrest, try or extradite", said that account should be taken of it in operative paragraph 5 as well. Also, she said that under international law a State could be obliged to try—but not to extradite—a person.

53. Mr. BENGOA said that there was agreement on the amendments to operative paragraph 4 proposed both by Mr. Yokota and by Ms. Hampson. Also, the expression "crimes against humanity" would be replaced by "war crimes and crimes against humanity" wherever it appeared—in all languages.

54. Mr. YOKOTA said that he wished to co-sponsor the draft resolution.

55. *Draft resolution E/CN.4/Sub.2/2001/L.29 was adopted.*

Draft resolution E/CN.4/Sub.2/2001/L.24 (Study on non-discrimination as enshrined in article 2.2 of the International Covenant on Economic, Social and Cultural Rights

56. Ms. MOTOC said that the French and English versions of Sub-Commission decision 1997/112 (E/CN.4/Sub.2/Dec./1997/112) regarding the criteria to be applied in the carrying out of new studies had been distributed to the members of the Sub-Commission. She proposed an amendment to draft

resolution L.24—the insertion on page 3 of the French version, before the paragraph starting "*Notant avec satisfaction*", of a paragraph reading "*Rappelant* la décision de la Sous-Commission 1997/112 relative aux critères à appliquer pour l'élaboration de nouvelles études".

57. *Draft resolution E/CN.4/Sub.2/2001/L.24, as revised, was adopted.*

58. *Draft decision E/CN.4/Sub.2/2001/L.44 was adopted.*

59. Mr. ALFONSO MARTÍNEZ, addressing Ms. Motoc, said that he had never objected to Sub-Commission members carrying out studies at the request of other convention-based bodies. However, he did not see why such studies should receive high priority. A decision to carry out a new study should be taken either in response to a request made by the Commission on Human Rights or on the initiative of the Sub-Commission itself.

Draft resolution E/CN.4/Sub.2/2001/L.15 (The Social Forum)

60. Mr. GUISSÉ said that he would like draft resolutions and decisions to be translated into French in future so that he could examine them in his mother tongue.

61. Mr. BENGOA presenting the draft resolution, said that it had been drafted by five representatives of different regions for the purpose of specifying aspects of the Social Forum which would be taking place in 2002. In the draft resolution, the Commission on Human Rights was requested to authorize the Sub-Commission to hold a social forum before its session. He proposed an amendment drafted by Mr. Kartashkin—the insertion in operative paragraph 3 of an initial subparagraph reading "The interaction between civil and political and economic, social and cultural rights;". He hoped that the draft resolution would be adopted unanimously.

62. Mr. YIMER said that he wished to co-sponsor the draft resolution. At the same time, he asked Mr. Bengoa whether it would be possible to recast operative paragraph 3, which he considered to be too detailed, so as to give the Special Forum greater autonomy in the selection of questions to be examined by it.

63. Mr. BENGOA said that operative paragraph 3 reflected the proposal made by the experts at the preparatory meeting on the Special Forum regarding specific themes, such as the right to food, to be covered in the discussions during the Scientific Forum which would be taking place in 2002, and which would have poverty as its general theme. In that connection, the Scientific Forum should follow, from the human rights point of view, the discussions that would be taking place soon in other international bodies.

64. Ms. HAMPSON proposed that in operative paragraph 3 of the English version of the draft resolution "in general" be replaced by "*inter alia*". With regard to operative paragraph 7, she said that the different entities enumerated there should be invited not only to submit studies to the Social Forum but also to participate in it.

65. Ms. ZERROUGUI enquired after the meaning of the English word "advocates" in the penultimate paragraph of the preamble and of the English word "destitution" in operative paragraph 2 (*b*). With regard to operative paragraph 8, she asked whether it made sense to try communicating with the most vulnerable by electronic means.

66. Ms. MOTOC said that the points raised by Ms. Zerrougui had also been raised during the discussions which had taken place among the representatives of the regional groups.

67. Mr. EIDE supported the proposal made by Mr. Yimer with a view to introducing greater flexibility into operative paragraph 3 of the draft resolution; by the same token, he proposed

replacing "*Decides*" by "*Recommends*". He supported the idea, put forward by Ms. Hampson, of inviting the various United Nations and other entities to participate in the Social Forum. Lastly, he proposed the deletion of the word "electronic" in operative paragraph 8, the idea behind which was that there should be consultation with vulnerable groups by either electronic or other means; electronic consultation could be useful in certain cases.

68. The CHAIRPERSON proposed the formulation "electronic and other consultation" for operative paragraph 8.

69. Ms. DAES thanked the co-sponsors of the draft resolution for their spirit of cooperation and for the flexibility demonstrated by them. She expressed support for all the amendment proposals made by Messrs. Bengoa, Eide and Yimer. With regard to the eighth preambular paragraph, she proposed that the words "the need to listen to the most vulnerable and their advocates" be replaced by the words "the need to be informed about the situation of the most vulnerable groups". She said that she wished to co-sponsor the draft resolution.

70. Mr. YIMER, supported by Mr. Bengoa, said that he welcomed Mr. Eide's proposal that the word "*Recommends*" be used in operative paragraph 3. With regard to operative paragraph 3 (g), he felt that the word "affairs" should be replaced by a more appropriate word. He said that he wished to co-sponsor the draft resolution.

71. Ms. HAMPSON, referring to the eighth preambular paragraph, said that in her view the present version was more appropriate. The wording proposed by Ms. Daes suggested that the information in question could derive from different sources, whereas the present version established a direct link with the most vulnerable. The present version was all the more appropriate in that the English word "advocates" did not merely correspond to the French word "avocats"; it also meant the defenders of a particular group, idea or person. She welcomed the proposed use of the word "*Recommends*" at the beginning of operative paragraph 3. Referring to operative paragraph 7, she proposed that the words "to participate in and" be inserted before the words "to submit". Lastly, she supported Ms. Zerrougui's proposal that the word "electronic" be deleted in operative paragraph 8.

72. Ms. WARZAZI, referring to operative paragraph 8, said that the expression "effective means" would give the High Commissioner for Human Rights the possibility of using the most appropriate means of contacting and consulting the most vulnerable.

73. Mr. BENGOA said that the English word "advocate" was admittedly difficult to define, but nowadays it was being used very widely. Like Ms. Hampson, he would prefer to see the words "*inter alia*" used at the beginning of operative paragraph 3. The word "affairs" in operative paragraph 3 (g) had no particular technical meaning and could easily be replaced by a word such as "issues" or "matters". He welcomed the amendments to operative paragraphs 7 and 8 that had been proposed. At the same time, he pointed out that the associations which represented the most vulnerable had access to the Internet, as demonstrated by the experience of indigenous groups. In future, it would be interesting to communicate with such groups through a virtual forum.

74. Mr. PINHEIRO said that he liked the idea of a virtual forum; it was necessary to keep up with the times. Also, it should be borne in mind that the non-governmental organizations would not have been able to express their demands if they had not been able to use electronic means of communication, as they had been in many Latin American countries.

75. Ms. ZERROUGUI said that she was in favour of using electronic means of consultation, especially if they were already being used in certain countries, but they should not be the sole means.

76. Ms. WARZAZI proposed the insertion of "consultation, including" between "ensuring" and "electronic" in operative paragraph 8.

77. Messrs. BENGOA, EIDE and PREWARE supported the proposal made by Ms. Warzazi.

78. Mr. GÓMEZ-ROBLEDO VERDUZCO, Mr. GUISSÉ, Ms. HAMPSON, Mr. Van HOOF, Mr. JOINET, Mr. KARTASHKIN, Mr. OGURTSOV, Mr. PARK, Mr. SIK YUEN, Ms. WARZAZI and Ms. ZERROUGUI said that they wished to co-sponsor the draft resolution.

79. Mr. JOINET recalled that the French version of the text had not been examined.

80. *Draft resolution E/CN.4/Sub.2/2001/L.15 was adopted in the English version, as amended.*

81. Mr. PARK, supported by Ms. Hampson, drew the attention of the Sub-Commission members to the note by the secretariat E/CN.4/Sub.2/2001/19. That note contained, in effect, a negative response by the Secretariat's Office of Legal Affairs to the Sub-Commission's resolution 2000/15. In that resolution, the Sub-Commission had requested the High Commissioner for Human Rights to promote the establishment, in the Office of Legal Affairs, of a database on national legislation on matters of relevance to indigenous peoples.

The meeting rose at 6.05 p.m.

UNITED
NATIONS

E

Economic and
Social Council

Distr.
GENERAL

E/CN.4/Sub.2/2001/SR.28
30 August 2001

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION
OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 17 August 2001, at 4 p.m.

Chairperson: Mr. WEISSBRODT

CONTENTS

DRAFT PROVISIONAL AGENDA AND ADOPTION OF THE REPORT

(a) DRAFT PROVISIONAL AGENDA FOR THE FIFTY-FOURTH SESSION OF THE SUB-COMMISSION

(b) ADOPTION OF THE REPORT ON THE FIFTY-THIRD SESSION

CLOSING OF THE SESSION

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within a week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.*0200443*9*

ENG

The meeting was called to order at 4.10 p.m.

DRAFT PROVISIONAL AGENDA AND ADOPTION OF THE REPORT (item 7 of the agenda)

(a) DRAFT PROVISIONAL AGENDA FOR THE FIFTY-FOURTH SESSION OF THE SUB-COMMISSION (E/CN.4/Sub.2/2001/L.1)

1. The CHAIRPERSON invited the members of the Sub-Commission to take note of the draft provisional agenda for the fifty-fourth session of the Sub-Commission, and also of the information concerning the related documents (E/CN.4/Sub.2/2001/L.1).

2. Mr. KARTASHKIN proposed separate consideration of each of the questions falling under item 6 (c) of the draft provisional agenda.

3. Ms. MOTOC, supported by Ms. ZERROUGUI, proposed that the question of women and human rights be the subject of a separate agenda item.

4. Ms. WARZAZI, supporting the previous two speakers, said that the Sub-Commission would be failing its duty if it did not respond to the General Assembly's request to all bodies dealing with human rights that they consider the rights of women. Devoting a separate agenda item to that subject would enable NGOs to judge precisely when to intervene on a whole series of questions, such as traditional practices, mass rape, female migrant workers or double discrimination.

5. Ms. HAMPSON said that in her view it was rather insulting to regard women as "other matters", as in the present agenda of the Sub-Commission. It should be possible to arrive at a consensus on the need to consider the question of women and human rights as such. That having been said, supported by Mr. PINHEIRO, she felt that, if the question were a separate agenda item, that would detract from other questions dealt with by the Sub-Commission, since it would be necessary to devote two or three meetings to it, and also to the subitems which would inevitably be created, whereas inscribing it as a subitem of an agenda item other than item 6 would avoid that pitfall.

6. The CHAIRPERSON recalled that the general practice of the Sub-Commission was simply to take note of the provisional agenda for the next session, since it would have to be discussed and adopted, with possible changes, at the start of that session.

7. Mr. JOINET, supported by Ms. MOTOC, recalled that, formally, the Sub-Commission could, at a current session, change the provisional agenda for the next session; that seemed to be what was implied by rule 5 of the Guidelines for the application by the Sub-Commission of the rules of procedure of the functional commissions of the Economic and Social Council.

8. Mr. YIMER said that such an approach would be technically possible, but it would be better, in practice, to wait until the start of the fifty-fourth session and then examine, and possibly change, the agenda for that session.

9. The CHAIRPERSON said that, if he heard no objections, he would assume that the Sub-Commission wished to take note of the draft provisional agenda for its fifty-fourth session, account being taken of the proposals for change which had been made and which would be considered during the adoption proper of the draft provisional agenda, at the start of the fifty-fourth session.

10. *It was so decided.*

(b) ADOPTION OF THE REPORT ON THE FIFTY-THIRD SESSION (E/CN.4/Sub.2/2001/L.10 and Addenda, E/CN.4/Sub.2/2001/L.11 and Addenda)

11. Mr. PREWARE (Rapporteur), presenting the draft report of the Sub-Commission, said that it was not yet available in all languages.

12. The CHAIRPERSON said that Mr. Bengoa had corrections to make to the part of the report relating to the Social Forum and that he himself intended to submit some changes to that text. The Secretariat would take account of the corrections which participants might wish to submit, it being understood that they should be communicated to it before 14 September 2001. He proposed that the Sub-Commission adopt the draft report *ad referendum*.

13. The draft report of the Sub-Commission on the work of its fifty-third session (E/CN.4/Sub.2/2001/L.10 and Addenda and E/CN.4/Sub.2/2001/L.11 and Addenda) was adopted *ad referendum*.

14. Ms. ROBINSON (United Nations High Commissioner for Human Rights) said that she had followed the work of the Sub-Commission with great interest. The Sub-Commission had demonstrated, at its current session, great innovative spirit and was making full use of its expertise at a decisive time for the cause of human rights. Particularly important in that regard had been the discussion on globalization that had followed the presentation of the report of Mr. Oloka-Onyango and Ms. Udagama on globalization and its impact on the full enjoyment of human rights, and also the preparatory meeting of the Special Forum. The latter body would focus in the coming year on the struggle against extreme poverty and, in particular, on the right to food. The Sub-Commission had also, by its resolution 2001/1, made a non-negligible contribution to the forthcoming Durban Conference on Racism. Lastly, referring to the various studies and working documents whose elaboration had been entrusted to several members of the Sub-Commission, she said that the Sub-Commission had lived up to its role of research body that placed its analytical skills at the service of other United Nations bodies.

15. At the procedural level, the fact that the discussions during the current session had focused on reports and working documents, instead of being a simple succession of statements by speakers inscribed in a list, had been very favourably received by the NGOs.

16. Noting that the Sub-Commission, given the complexity of the questions before it, wished the normal duration of its sessions—four weeks—to be re-established, she said that her very presence demonstrated the importance which she attached to the work of the Sub-Commission.

17. Lastly, she paid tribute to the two members of the Sub-Commission whose terms were ending, namely Ms. Daes and Mr. Joinet.

18. The CHAIRPERSON, having expressed his gratitude to all those who had contributed to the success of the current session, paid particular tribute to two of his colleagues whose terms were ending, namely Ms. Daes and Mr. Joinet. Both had done pioneering work, and their contributions to the deliberations of the Sub-Commission would remain a source of inspiration for all.

19. Ms. PARKER (Minnesota Advocates for Human Rights), speaking on behalf of that organization and of the Tupaj Amaru Movement, paid an eloquent tribute to Ms. Daes for her tremendous contribution to the defence of the rights of indigenous populations.

20. Ms. DAES, having thanked the previous speaker and also all those others who had spoken warmly about her, expressed her own gratitude to the governmental representatives without whom nothing could have been done for indigenous groups and appealed to them to continue supporting the efforts of the Working Group on Indigenous Populations.

21. Mr. PINHEIRO said that, as a national of a Latin American country, he wished to pay personal tribute to Mr. Louis Joinet and Ms. Erika Daes: to Mr. Louis Joinet because he had demonstrated unshakeable devotion to the cause of human rights during the dark hours of dictatorship in Argentina, Uruguay, Brazil and Chile; and to Ms. Daes because the indigenous populations of Latin America owed her a great deal, as had been recalled by the representative of the Tupaj Amaru Movement.

22. After an exchange of compliments in which Ms. WARZAZI, Mr. EIDE, Mr. BENGOA, Mr. GOONESEKERE, Mr. PINHEIRO and Ms. MOTOC participated, the CHAIRPERSON declared the fifty-third session of the Sub-Commission closed.

The meeting rose at 6 p.m.